

2001 DRAFTING REQUEST

Bill

Received: **09/18/2000**

Received By: **nelsorp1**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Wong**

This file may be shown to any legislator: **NO**

Drafter: **nelsorp1**

May Contact:

Alt. Drafters:

Subject: **Courts - immunity liablty**

Extra Copies: **DNR-Lance Potter 7-7418**

Pre Topic:

DOA:.....Wong -

Topic:

Immunity regarding the use of solid waste for public projects

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	nelsorp1 09/20/2000	gilfokm 09/26/2000	rschluet 09/28/2000	_____	lrb_docadmin 09/28/2000		State
/2	nelsorp1 10/04/2000	gilfokm 10/04/2000	martykr 10/04/2000	_____	lrb_docadmin 10/04/2000		State
/3	nelsorp1 11/09/2000	gilfokm 11/09/2000	pgreensl 11/10/2000	_____	lrb_docadmin 11/10/2000		State
/4	nelsorp1 12/28/2000	gilfokm 12/28/2000	rschluet 01/05/2001	_____	lrb_docadmin 01/05/2001		State

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2001-2003 Statutory Language Proposals

Division: AIR & WASTE

Bureau: WASTE MANAGEMENT

Issue/Topic: "SPECIAL WASTE" AS DEFINED AT WIS. STAT. S. 895.58

Proposed Change: 1) Throughout s. 895.58, substitute the term "exempt solid waste" for the term "special waste". Repeal the definition of "special waste" in s. 895.58 (1) (d) and create a new definition of "exempt solid waste" to read as follows:

"Exempt solid waste" means a type of solid waste, as defined in s. 289.01 (33), for which the department has granted a research waiver or an exemption under ss. 289.43 (3), (4), (7), or (8).

2) Require that the Department maintain a list of "exempt solid wastes" rather than identifying "special wastes". Amend s. 895.58 (2) to read as follows:

The department shall maintain a list of exempt solid wastes for which a waiver or an exemption from regulation has been granted by rule or on a case-by-case basis for beneficial use in a transportation project under s. 289.43 (3), (4), (7), or (8). Any applicable conditions of the waiver or exemption shall apply and the list shall reference the applicable conditions of each waiver or exemption. A contracting agency may not require the beneficial use or reuse of a solid waste in a public works project unless it is an exempt solid waste complying with all the conditions of the exemption or waiver.

3) Repeal s. 895.58 (3), which states that special waste used in public works projects is not subject to regulation as solid waste.

4) Renumber s. 895.58 (4) dealing with liability exemption as s. 895.58 (3). The former (4) (a) and (b) would be renumbered as (3) (a) and (3) (b). However, renumber and amend the old (4) (intro.) as a new (3) (intro.) to read as follows:

(3) (intro.) A person is immune from liability for the use or reuse of exempt solid waste on a public works project or for damages resulting from the person's actions or omissions relating to the use or reuse of the exempt solid special waste on a public works project if all of the following apply:

Create s. 895.58 (3) (c) "The person complies with all applicable conditions of the waiver or exemption under ss. 289.43 (3), (4), (7), or (8)."

Explanatory Note:

Section 895.58, Wis. Stats., was created in 1999 Wisconsin Act 9. This section of the statutes says that DNR may designate "special wastes" for beneficial use in public works projects. No state or local agency can require the use of wastes unless they are designated as special wastes. When used in public works projects, special wastes are not subject to regulation as solid wastes and the contractor who used the waste is immune from liability related to the use of the waste. This newly created section of the Statutes causes some significant problems. From the Department's perspective, the law is an obstacle to recycling and beneficial use of solid wastes in the public sector.

The current s. 289.43 already contains the authority, criteria, and procedures for exemptions from solid waste laws. There should be no need under s. 895.58 for DNR to develop a separate list of "special wastes" that are exempt from regulation when used under a government contract. It is believed that by substituting the term "exempt solid waste" for the term "special waste", much of the current framework of s. 895.58 could be retained.

Desired Effective Date: Effective date of the budget act.

Contact Person:

Lance Potter, MB/5 (7-7418); Eric Ebersberger, MB/5 (6-0818).
Kevin Kessler, WA/3 (6-5207); Chuck Leveque, LS/5, (6-0228);

895.58

895.58 Liability exemption; use of special waste under public works contracts.

895.58(1)

(1) (intro.) In this section:

895.58(1)(a)

(a) "Department" means the department of natural resources.

895.58(1)(b)

(b) "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an agency or corporation of such a political subdivision or special purpose district, or a combination or subunit of any of the foregoing.

895.58(1)(c)

(c) "Public works project" means any work done under contract to a state agency or local governmental unit.

895.58(1)(d)

(d) "**Special waste**" means any solid waste that is characterized for beneficial use in public works projects by the department of natural resources.

895.58(2)

(2) The department may characterize a solid waste for beneficial use in public works projects by rule, memorandum of understanding between itself and other state agencies or local governmental units, or on a case-by-case basis. The department shall compile and maintain a list of special wastes in a format readily available to the general public and only those special wastes may be required by contracting agencies to be used in a public works project.

895.58(3)

(3) **Special waste**, when used in a public works project, is not subject to regulation as solid waste under ch. 289.

895.58(4)

(4) (intro.) A person is immune from liability for the use of **special waste** on a public works project or for damages resulting from the person's actions or omissions relating to the use of the **special waste** on a public works project if all of the following apply:

895.58(4)(a)

(a) The acts or omissions by the person occurred while performing work under a contract for a public works project including acts or omissions by any person who has a direct contractual relationship with the prime contractor, as defined in s. 779.01 (2) (d), under a contract for a public works project to perform labor or furnish materials.

895.58(4)(b)

(b) The acts or omissions involving the special wastes were required or permitted in a contract for a public works project and the acts or omissions conformed to the provisions of the contract.

895.58(5)

(5) (intro.) Subsection (4) does not apply to any person to whom either of the following applies:

895.58(5)(a)

(a) The person's act or omission involved reckless, wanton or intentional misconduct.

895.58(5)(b)

(b) The person's act or omission resulted in injury or death to an individual.



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-0363/1

RPN... King

SOON

DOA:.....Wong - Immunity regarding the use of solid waste for public projects

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

NOTE

1 AN ACT ^{DON'T GEN. CFT.} relating to: the budget.

Analysis by the Legislative Reference Bureau

COURTS AND PROCEDURE

OTHER COURTS AND PROCEDURE

Under current law, DNR may characterize a solid waste for beneficial use in a public works project and ~~is required to~~ maintain a list of those characterized solid wastes in a format that is available to the public. Currently, a contracting agency in a public works project may only require the use of those characterized solid wastes for use in ~~the~~ public works project. Current law grants immunity from liability to any person for his or her acts or omissions while using those characterized solid wastes in ~~the~~ public works project if ~~the~~ act or omission occurred while performing work under the contract for the public works project, the contract permitted or required the use of those characterized solid wastes, and the acts or omissions conformed to the contract provisions. Current law ~~make~~ the immunity inapplicable to acts or omissions that involve reckless, wanton, or intentional misconduct or that result in the death or injury of an individual.

Under current law, as a way to encourage new ways to treat or recycle solid wastes, DNR may grant a research waiver or an exemption from the requirements regarding the treatment of solid wastes for types of solid wastes or for solid waste facilities. This bill requires DNR to maintain a list of ~~the~~ solid wastes that have been

granted a research waiver or exemption and that may be of beneficial use in a transportation-related public works project. The bill prohibits a contracting agency in a transportation-related public works project from requiring the use of a solid waste in the project unless the solid waste is on the DNR list of exempt solid wastes and all of the applicable waiver or exemption conditions are met. Under the bill, ^apersons who use a listed exempt solid waste in a transportation-related public works project ~~are~~ exempt from liability if the act or omission occurred while performing work under the contract for the project, the contract permitted or required the use of exempt solid wastes, the acts or omissions conformed to the contract provisions, and the person complied with the applicable waiver or exemption conditions. The current law provisions prohibiting ~~the~~ immunity for acts of reckless, wanton, or intentional misconduct or that result in the death or injury of an individual apply.

→ FE - State ←

✓
Insert 2-1 →
The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 895.58 (1) (am) of the statutes is created to read:

2 895.58 (1) (am) "Exempt solid waste" means a type of solid waste, as defined
3 in s. 289.01 (33), for which the department has granted a research waiver or an
4 exemption under s. 289.43 (3), (4), or (8) or the type of solid waste used in a facility
5 for which the department has granted an exemption under ~~an~~ 289.43 (7).

6 **SECTION 2.** 895.58 (1) (d) of the statutes is repealed. S.A

7 **SECTION 3.** 895.58 (2) of the statutes is repealed.

8 **SECTION 4.** 895.58 (2m) of the statutes is created to read:

9 895.58 (2m) The department shall maintain a list of exempt solid wastes that
10 may be of beneficial use in a transportation-related public works project. Any
11 applicable conditions of the waiver or exemption granted under s. 289.43 (3), (4), (7),
12 or (8) shall apply and the list of exempt solid wastes shall reference the applicable
13 conditions of each waiver or exemption.

14 **SECTION 5.** 895.58 (3) of the statutes is repealed.

15 **SECTION 6.** 895.58 (3m) of the statutes is created to read:

1 895.58 (3m) A contracting agency may not require the beneficial use or reuse
2 of ~~an exempt~~ solid waste in a transportation-related public works project unless the ~~solid~~ ^{EXEMPT}
3 waste is on the list maintained under sub. (2m) and for which all of the applicable
4 conditions of the waiver or exemption are met.

5 SECTION 7. 895.58 (4) (intro.) of the statutes is amended to read:

6 895.58 (4) (intro.) A person is immune from liability for the use or reuse of
7 ~~special~~ an exempt solid waste on a transportation-related public works project or for
8 damages resulting from the person's actions or omissions relating to the use or reuse
9 of the ~~special~~ exempt solid waste on a transportation-related public works project
10 if all of the following apply:

History: 1999 a. 9, 185.

11 SECTION 8. 895.58 (4) (a) of the statutes is amended to read:

12 895.58 (4) (a) The acts or omissions by the person occurred while performing
13 work under a contract for a transportation-related public works project [,] including
14 acts or omissions by any person who has a direct contractual relationship with the
15 prime contractor, as defined in s. 779.01 (2) (d), under a contract for a
16 transportation-related public works project to perform labor or furnish materials.

History: 1999 a. 9, 185.

17 SECTION 9. 895.58 (4) (b) of the statutes is amended to read:

18 895.58 (4) (b) The acts or omissions involving the ~~special~~ exempt solid wastes
19 were required or permitted in a contract for a transportation-related public works
20 project and the acts or omissions conformed to the provisions of the contract.

History: 1999 a. 9, 185.

21 SECTION 10. 895.58 (4) (c) of the statutes is created to read:

22 895.58 (4) (c) The person complied with all ^{of} the applicable conditions of the
23 waiver or exemption under s. 289.43 (3), (4), (7), or (8).

24 SECTION 11. 895.58 (4) (d) of the statutes is created to read:

1 895.58 (4) (d) The exempt solid waste in on the list maintained under sub. (2).

2 (END)

(2m)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0363/1dn

RPN

A handwritten signature in black ink, appearing to be 'Kmg', is written over the 'RPN' text.

Please review this draft carefully to ensure that it is consistent with your intent. I made significant changes to deal with the language regarding transportation projects.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us

TYPED

Insert 2-1

SEC #. 895.58 (title) of the statutes is amended to read:

~~1999 Wisconsin Act 9~~

648 -

~~1999 Assembly Bill 133~~

SECTION 3113p. 895.58 of the statutes is created to read: (title) score → solid
§ 895.58 Liability exemption; use of special waste under public works contracts. (1) In this section:

(a) "Department" means the department of natural resources.

(b) "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an agency or corporation of such a political subdivision or special purpose district, or a combination or subunit of any of the foregoing.

(c) "Public works project" means any work done under contract to a state agency or local governmental unit.

(d) "Special waste" means any solid waste which is characterized for beneficial use in public works projects by the department of natural resources.

(2) The department may characterize a solid waste for beneficial use in public works projects by rule, memorandum of understanding between itself and other state agencies or local governmental units, or on a case-by-case basis. The department shall compile and maintain a list of special wastes in a format readily available to the general public and only those special wastes may be required by contracting agencies to be used in a public works project.

(3) Special waste, when used in a public works project, is not subject to regulation as solid waste under ch. 289.

(4) A person is immune from liability for the use of special waste on a public works project or for damages resulting from the person's actions or omissions relating to the use of the special waste on a public works project if all of the following apply:

(a) The acts or omissions by the person occurred while performing work under a contract for a public works project including acts or omissions by any person who has a direct contractual relationship with the prime contractor, as defined in s. 779.01 (2) (d), under a contract for a public works project to perform labor or furnish materials.

(b) The acts or omissions involving the special wastes were required or permitted in a contract for a pub-

more than 4 juveniles unless all of the juveniles are siblings or, if necessary to enable a sibling group to remain together, for no more than 6 juveniles or, if the department of health and family services promulgates rules permitting a different number of juveniles, for the number of juveniles permitted under those rules.

SECTION 3116. 938.02 (14m) of the statutes is amended to read:

938.02 (14m) "Pupil assistance program" means a program provided by a school board under s. 115.362 (4) (b) 2. 115.361 to intervene in the abuse of alcohol and other drugs by pupils.

SECTION 3117d. 938.02 (15g) of the statutes is amended to read:

938.02 (15g) "Secured child caring institution" means a child caring institution operated by a child welfare agency that is licensed under s. 48.66 (1) (b) to hold in secure custody persons adjudged delinquent.

SECTION 3118d. 938.02 (15m) of the statutes is amended to read:

938.02 (15m) "Secured correctional facility" means a correctional institution operated or contracted for by the department of corrections or operated by the department of health and family services for holding in secure custody persons adjudged delinquent. "Secured correctional facility" includes the Mendota juvenile treatment center under s. 46.057, the facility at which the juvenile boot camp program under s. 938.532 is operated, and a facility authorized under s. 938.533 (3) (b), 938.538 (4) (b) or 938.539 (5).

SECTION 3119d. 938.02 (15p) of the statutes is created to read:

938.02 (15p) "Secured group home" means a group home that is licensed under s. 48.66 (1) (b) to hold in secure custody persons who have been convicted under s. 938.183 or adjudicated delinquent under s. 938.183 or 938.34 (4m).

SECTION 3120d. 938.02 (17) of the statutes is amended to read:

938.02 (17) "Shelter care facility" means a nonsecure place of temporary care and physical custody for juveniles, including a holdover room, licensed by the

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0363/1dn
RPN:king:rs

September 27, 2000

Please review this draft carefully to ensure that it is consistent with your intent. I made significant changes to deal with the language regarding transportation projects.

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Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us



5004 10/4
State of Wisconsin
2001 - 2002 LEGISLATURE

2
LRB-0363/1
RPN:kmg:rs

D-Note

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FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

1

AN ACT ^{DON'T GEN. CAT} relating to: the budget.

Analysis by the Legislative Reference Bureau

COURTS AND PROCEDURE

OTHER COURTS AND PROCEDURE

Under current law, DNR may characterize a solid waste for beneficial use in a public works project and must maintain a list of those characterized solid wastes in a format that is available to the public. Currently, a contracting agency in a public works project may only require the use of those characterized solid wastes in a public works project. Current law grants immunity from liability to any person for his or her acts or omissions while using those characterized solid wastes in a public works project if those acts or omissions occurred while performing work under the contract for the public works project, the contract permitted or required the use of those characterized solid wastes, and the acts or omissions conformed to the contract provisions. Current law makes the immunity inapplicable to acts or omissions that involve reckless, wanton, or intentional misconduct or that result in the death or injury of an individual.

Under current law, as a way to encourage new ways to treat or recycle solid waste, DNR may grant a research waiver or an exemption from the requirements regarding the treatment of solid waste for certain types of solid waste, or for solid waste facilities. This bill requires DNR to maintain a list of solid wastes that have

been granted a research waiver or exemption and that may be of beneficial use in a transportation-related public works project. The bill prohibits a contracting agency in a transportation-related public works project from requiring the use of a solid waste in the project unless the solid waste is on the DNR list of exempt solid wastes and all of the applicable waiver or exemption conditions are met. Under the bill, a person who uses a listed exempt solid waste in a transportation-related public works project is exempt from liability if the act or omission occurred while performing work under the contract for the project, the contract permitted or required the use of exempt solid wastes, the acts or omissions conformed to the contract provisions, and the person complied with the applicable waiver or exemption conditions. The current law provisions prohibiting immunity for acts of reckless, wanton, or intentional misconduct or that result in the death or injury of an individual apply.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 895.58 (title) of the statutes is amended to read:

895.58 (title) **Liability exemption; use of special solid waste under public works contracts.**

SECTION 2. 895.58 (1) (am) of the statutes is created to read:

895.58 (1) (am) "Exempt solid waste" means a type of solid waste ~~as defined~~
~~in s. 289.01 (3m)~~ for which the department has granted a research waiver or an
exemption under s. 289.43 (3), (4), or (8) or the type of solid waste used in a facility
for which the department has granted an exemption under s. 289.43 (7).

SECTION 3. 895.58 (1) (d) of the statutes is repealed.

SECTION 4. 895.58 (2) of the statutes is repealed.

SECTION 5. 895.58 (2m) of the statutes is created to read:

895.58 (2m) The department shall maintain a list of exempt solid wastes that may be of beneficial use in a transportation-related public works project. Any applicable conditions of the waiver or exemption granted under s. 289.43 (3), (4), (7),

SEC #. 895.58 (1) (d) of the statutes is created to read:
895.58 (1) (d) "solid waste" has the meaning given in s. 289.01 (33).

or (8) shall apply and the list of exempt solid wastes shall reference the applicable conditions of each waiver or exemption.

SECTION 6. 895.58 (3) of the statutes is repealed.

SECTION 7. 895.58 (3m) of the statutes is created to read:

895.58 (3m) A contracting agency may not require the beneficial use or reuse of ~~the exempt~~^a solid waste in a transportation-related public works project unless the ~~exempt~~ solid waste is on the list maintained under sub. (2m) and for which all of the applicable conditions of the waiver or exemption are met. *plain space*

SECTION 8. 895.58 (4) (intro.) of the statutes is amended to read:

895.58 (4) (intro.) A person is immune from liability for the use or reuse of ~~special~~ an exempt solid waste on a transportation-related public works project or for damages resulting from the person's actions or omissions relating to the use or reuse of the ~~special~~ exempt solid waste on a transportation-related public works project if all of the following apply:

SECTION 9. 895.58 (4) (a) of the statutes is amended to read:

895.58 (4) (a) The acts or omissions by the person occurred while performing work under a contract for a transportation-related public works project, including acts or omissions by any person who has a direct contractual relationship with the prime contractor, as defined in s. 779.01 (2) (d), under a contract for a transportation-related public works project to perform labor or furnish materials.

SECTION 10. 895.58 (4) (b) of the statutes is amended to read:

895.58 (4) (b) The acts or omissions involving the ~~special~~ exempt solid wastes were required or permitted in a contract for a transportation-related public works project and the acts or omissions conformed to the provisions of the contract.

SECTION 11. 895.58 (4) (c) of the statutes is created to read:

1 895.58 (4) (c) The person complied with all of the applicable conditions of the
2 waiver or exemption under s. 289.43 (3), (4), (7), or (8).

3 **SECTION 12.** 895.58 (4) (d) of the statutes is created to read:

4 895.58 (4) (d) The exempt solid waste in on the list maintained under sub. (2m).

5 ~~END~~



2001

Nonstat File Sequence:

FFF

LRB - 036312

RPN: : :

EFFECTIVE DATE

1. In the component bar: For the action phrase, execute: ... create → action: → *NS: → effdate
For the text, execute: create → text: → *NS: → effdateA
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed.

SECTION # ____ . Effective date.

(#1) () This act takes effect
on

1. In the component bar: For the action phrase, execute: .. create → action: → *NS: → effdateE
For the text, execute: create → text: → *NS: → effdate
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed.

SECTION # ____ . Effective dates;

..... This act takes effect on the day after publication, except as follows:

(#1) () The treatment of
sections
of the statutes takes effect on

1. In the component bar: For the budget action phrase, execute: ... create → action: → *NS: → 94XX
For the text, execute: create → text: → *NS: → effdate
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed. Below, for the budget, fill in the 9400 department code.

SECTION 94 0 9 . Effective dates; ...

Courts.

(#1) *Immunity for solid waste use.* The treatment of
sections *895.58 (title), (1) (a), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), (aa), (ab), (ac), (ad), (ae), (af), (ag), (ah), (ai), (aj), (ak), (al), (am), (an), (ao), (ap), (aq), (ar), (as), (at), (au), (av), (aw), (ax), (ay), (az), (ba), (bb), (bc), (bd), (be), (bf), (bg), (bh), (bi), (bj), (bk), (bl), (bm), (bn), (bo), (bp), (bq), (br), (bs), (bt), (bu), (bv), (bw), (bx), (by), (bz), (ca), (cb), (cc), (cd), (ce), (cf), (cg), (ch), (ci), (cj), (ck), (cl), (cm), (cn), (co), (cp), (cq), (cr), (cs), (ct), (cu), (cv), (cw), (cx), (cy), (cz), (da), (db), (dc), (dd), (de), (df), (dg), (dh), (di), (dj), (dk), (dl), (dm), (dn), (do), (dp), (dq), (dr), (ds), (dt), (du), (dv), (dw), (dx), (dy), (dz), (ea), (eb), (ec), (ed), (ee), (ef), (eg), (eh), (ei), (ej), (ek), (el), (em), (en), (eo), (ep), (eq), (er), (es), (et), (eu), (ev), (ew), (ex), (ey), (ez), (fa), (fb), (fc), (fd), (fe), (ff), (fg), (fh), (fi), (fj), (fk), (fl), (fm), (fn), (fo), (fp), (fq), (fr), (fs), (ft), (fu), (fv), (fw), (fx), (fy), (fz), (ga), (gb), (gc), (gd), (ge), (gf), (gg), (gh), (gi), (gj), (gk), (gl), (gm), (gn), (go), (gp), (gq), (gr), (gs), (gt), (gu), (gv), (gw), (gx), (gy), (gz), (ha), (hb), (hc), (hd), (he), (hf), (hg), (hh), (hi), (hj), (hk), (hl), (hm), (hn), (ho), (hp), (hq), (hr), (hs), (ht), (hu), (hv), (hw), (hx), (hy), (hz), (ia), (ib), (ic), (id), (ie), (if), (ig), (ih), (ii), (ij), (ik), (il), (im), (in), (io), (ip), (iq), (ir), (is), (it), (iu), (iv), (iw), (ix), (iy), (iz), (ja), (jb), (jc), (jd), (je), (jf), (jg), (jh), (ji), (jj), (jk), (jl), (jm), (jn), (jo), (jp), (jq), (jr), (js), (jt), (ju), (jv), (jw), (jx), (jy), (jz), (ka), (kb), (kc), (kd), (ke), (kf), (kg), (kh), (ki), (kj), (kk), (kl), (km), (kn), (ko), (kp), (kq), (kr), (ks), (kt), (ku), (kv), (kw), (kx), (ky), (kz), (la), (lb), (lc), (ld), (le), (lf), (lg), (lh), (li), (lj), (lk), (ll), (lm), (ln), (lo), (lp), (lq), (lr), (ls), (lt), (lu), (lv), (lw), (lx), (ly), (lz), (ma), (mb), (mc), (md), (me), (mf), (mg), (mh), (mi), (mj), (mk), (ml), (mn), (mo), (mp), (mq), (mr), (ms), (mt), (mu), (mv), (mw), (mx), (my), (mz), (na), (nb), (nc), (nd), (ne), (nf), (ng), (nh), (ni), (nj), (nk), (nl), (nm), (nn), (no), (np), (nq), (nr), (ns), (nt), (nu), (nv), (nw), (nx), (ny), (nz), (oa), (ob), (oc), (od), (oe), (of), (og), (oh), (oi), (oj), (ok), (ol), (om), (on), (oo), (op), (oq), (or), (os), (ot), (ou), (ov), (ow), (ox), (oy), (oz), (pa), (pb), (pc), (pd), (pe), (pf), (pg), (ph), (pi), (pj), (pk), (pl), (pm), (pn), (po), (pp), (pq), (pr), (ps), (pt), (pu), (pv), (pw), (px), (py), (pz), (qa), (qb), (qc), (qd), (qe), (qf), (qg), (qh), (qi), (qj), (qk), (ql), (qm), (qn), (qo), (qp), (qq), (qr), (qs), (qt), (qu), (qv), (qw), (qx), (qy), (qz), (ra), (rb), (rc), (rd), (re), (rf), (rg), (rh), (ri), (rj), (rk), (rl), (rm), (rn), (ro), (rp), (rq), (rr), (rs), (rt), (ru), (rv), (rw), (rx), (ry), (rz), (sa), (sb), (sc), (sd), (se), (sf), (sg), (sh), (si), (sj), (sk), (sl), (sm), (sn), (so), (sp), (sq), (sr), (ss), (st), (su), (sv), (sw), (sx), (sy), (sz), (ta), (tb), (tc), (td), (te), (tf), (tg), (th), (ti), (tj), (tk), (tl), (tm), (tn), (to), (tp), (tq), (tr), (ts), (tt), (tu), (tv), (tw), (tx), (ty), (tz), (ua), (ub), (uc), (ud), (ue), (uf), (ug), (uh), (ui), (uj), (uk), (ul), (um), (un), (uo), (up), (uq), (ur), (us), (ut), (uu), (uv), (uw), (ux), (uy), (uz), (va), (vb), (vc), (vd), (ve), (vf), (vg), (vh), (vi), (vj), (vk), (vl), (vm), (vn), (vo), (vp), (vq), (vr), (vs), (vt), (vu), (vv), (vw), (vx), (vy), (vz), (wa), (wb), (wc), (wd), (we), (wf), (wg), (wh), (wi), (wj), (wk), (wl), (wm), (wn), (wo), (wp), (wq), (wr), (ws), (wt), (wu), (wv), (ww), (wx), (wy), (wz), (xa), (xb), (xc), (xd), (xe), (xf), (xg), (xh), (xi), (xj), (xk), (xl), (xm), (xn), (xo), (xp), (xq), (xr), (xs), (xt), (xu), (xv), (xw), (xx), (xy), (xz), (ya), (yb), (yc), (yd), (ye), (yf), (yg), (yh), (yi), (yj), (yk), (yl), (ym), (yn), (yo), (yp), (yq), (yr), (ys), (yt), (yu), (yv), (yw), (yx), (yy), (yz), (za), (zb), (zc), (zd), (ze), (zf), (zg), (zh), (zi), (zj), (zk), (zl), (zm), (zn), (zo), (zp), (zq), (zr), (zs), (zt), (zu), (zv), (zw), (zx), (zy), (zz).*
of the statutes takes effect on

*the first day of the 9th month
beginning after publication.*

(END)

[rev: 8/28/00 2001effdate(fm)]

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

2
LRB-0363/1dn
RPN:kmg:rs

September 27, 2000

Please review this draft carefully to ensure that it is consistent with your intent. I made significant changes to deal with the language regarding transportation projects.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us

I revised s. 895.58(3m) at the suggestion of Becky Tradevill to clarify that no solid waste may be used (not just exempt solid waste) unless it is listed by DATCP.

(space) →

I added a delayed effective date to give the department time to implement the changes.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0363/2dn
RPN:lmg:km

October 4, 2000

I revised s. 895.58 (3m) at the suggestion of Becky Tradewell to clarify that no solid waste may be used (not just exempt solid waste) unless it is listed by DATCP.

I added a delayed effective date to give the department time to implement the changes.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us

Nelson, Robert P.

From: Nilsen, Paul
Sent: Tuesday, November 07, 2000 4:01 PM
To: Nelson, Robert P.
Subject: 0363/2

Bob,

I recommend an initial app on LRB-0363/2, relating to use of solid waste in public works projects. The change should first apply to contracts executed on the effective date. DOT may have contracts (and contractors may have subcontracts) calling for use of materials that may not be allowed under the draft.

Nice talking with you. I get LRB homesick from time to time but I'm doing so much new stuff here the time whizzes by. Plus I got that pothole taken care of in front of my house.

Paul E. Nilsen
Office of General Counsel, WisDOT
Paul.Nilsen@dot.state.wi.us
(608) 261-0126



800 W (11/9)
State of Wisconsin
2001 - 2002 LEGISLATURE

3
LRB-03632
RPN:kmg:km

D-Note

DOA:.....Wong - Immunity regarding the use of solid waste for public projects

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

D-NOTE.
this draft adds an initial
applicability ^{CS} section.

RPN

DON'T GEN. CAT.
1 AN ACT ... relating to: the budget.

Analysis by the Legislative Reference Bureau

COURTS AND PROCEDURE

OTHER COURTS AND PROCEDURE

Under current law, DNR may characterize a solid waste for beneficial use in a public works project and must maintain a list of those characterized solid wastes in a format that is available to the public. Currently, a contracting agency in a public works project may only require the use of those characterized solid wastes in a public works project. Current law grants immunity from liability to any person for his or her acts or omissions while using those characterized solid wastes in a public works project if those acts or omissions occurred while performing work under the contract for the public works project, the contract permitted or required the use of those characterized solid wastes, and the acts or omissions conformed to the contract provisions. Current law makes the immunity inapplicable to acts or omissions that involve reckless, wanton, or intentional misconduct or that result in the death or injury of an individual.

Under current law, as a way to encourage new ways to treat or recycle solid waste, DNR may grant a research waiver or an exemption from the requirements regarding the treatment of solid waste for certain types of solid waste, or for solid waste facilities. This bill requires DNR to maintain a list of solid wastes that have

been granted a research waiver or exemption and that may be of beneficial use in a transportation-related public works project. The bill prohibits a contracting agency in a transportation-related public works project from requiring the use of a solid waste in the project unless the solid waste is on the DNR list of exempt solid wastes and all of the applicable waiver or exemption conditions are met. Under the bill, a person who uses a listed exempt solid waste in a transportation-related public works project is exempt from liability if the act or omission occurred while performing work under the contract for the project, the contract permitted or required the use of exempt solid wastes, the acts or omissions conformed to the contract provisions, and the person complied with the applicable waiver or exemption conditions. The current law provisions prohibiting immunity for acts of reckless, wanton, or intentional misconduct or that result in the death or injury of an individual apply.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 895.58 (title) of the statutes is amended to read:

2 **895.58 (title) Liability exemption; use of special solid waste under**
3 **public works contracts.**

4 **SECTION 2.** 895.58 (1) (am) of the statutes is created to read:

5 895.58 (1) (am) “Exempt solid waste” means a type of solid waste for which the
6 department has granted a research waiver or an exemption under s. 289.43 (3), (4),
7 or (8) or the type of solid waste used in a facility for which the department has granted
8 an exemption under s. 289.43 (7).

9 **SECTION 3.** 895.58 (1) (cr) of the statutes is created to read:

10 895.58 (1) (cr) “Solid waste” has the meaning given in s. 289.01 (33).

11 **SECTION 4.** 895.58 (1) (d) of the statutes is repealed.

12 **SECTION 5.** 895.58 (2) of the statutes is repealed.

13 **SECTION 6.** 895.58 (2m) of the statutes is created to read:

1 895.58 (2m) The department shall maintain a list of exempt solid wastes that
2 may be of beneficial use in a transportation-related public works project. Any
3 applicable conditions of the waiver or exemption granted under s. 289.43 (3), (4), (7),
4 or (8) shall apply and the list of exempt solid wastes shall reference the applicable
5 conditions of each waiver or exemption.

6 **SECTION 7.** 895.58 (3) of the statutes is repealed.

7 **SECTION 8.** 895.58 (3m) of the statutes is created to read:

8 895.58 (3m) A contracting agency may not require the beneficial use or reuse
9 of a solid waste in a transportation-related public works project unless the solid
10 waste is on the list maintained under sub. (2m) and for which all of the applicable
11 conditions of the waiver or exemption are met.

12 **SECTION 9.** 895.58 (4) (intro.) of the statutes is amended to read:

13 895.58 (4) (intro.) A person is immune from liability for the use or reuse of
14 ~~special~~ an exempt solid waste on a transportation-related public works project or for
15 damages resulting from the person's actions or omissions relating to the use or reuse
16 of the ~~special~~ exempt solid waste on a transportation-related public works project
17 if all of the following apply:

18 **SECTION 10.** 895.58 (4) (a) of the statutes is amended to read:

19 895.58 (4) (a) The acts or omissions by the person occurred while performing
20 work under a contract for a transportation-related public works project, including
21 acts or omissions by any person who has a direct contractual relationship with the
22 prime contractor, as defined in s. 779.01 (2) (d), under a contract for a
23 transportation-related public works project to perform labor or furnish materials.

24 **SECTION 11.** 895.58 (4) (b) of the statutes is amended to read:

1 895.58 (4) (b) The acts or omissions involving the special exempt solid wastes
2 were required or permitted in a contract for a transportation-related public works
3 project and the acts or omissions conformed to the provisions of the contract.

4 **SECTION 12.** 895.58 (4) (c) of the statutes is created to read:

5 895.58 (4) (c) The person complied with all of the applicable conditions of the
6 waiver or exemption under s. 289.43 (3), (4), (7), or (8).

7 **SECTION 13.** 895.58 (4) (d) of the statutes is created to read:

8 895.58 (4) (d) The exempt solid waste in on the list maintained under sub. (2m).

9 **SECTION 9409. Effective dates; circuit courts.**

10 (1) IMMUNITY FOR SOLID WASTE USE. The treatment of section 895.58 (title), (1)
11 (am), (cr), and (d), (2), (2m), (3), (3m), and (4) (intro.), (a), (b), (c), and (d) of the
12 statutes ^gtakes effect on the first day of the 4th month beginning after publication.

13 (END)

INS. 4-8

auto ref "KA".

→ and @S SECTION 9309 (1) of this act

2001

Nonstat File Sequence: **EEE**

LRB -036313

RPN : _____

INITIAL APPLICABILITY

INS. 4-8

1. In the component bar:

For the action phrase, execute:

create → action: → *NS: → inappl

For the budget action phrase, execute:

create → action: → *NS: → 93XX

For the text, execute:

create → text: → *NS: → inappl

2. Nonstatutory subunits are numbered automatically. Fill in the Section # or subsection # only if a "frozen" number is needed. Below, for the budget, fill in the 9300 department code.

SECTION # NW 193 0 9 F

Initial applicability;

Circuit Courts

(#1) Immunity for Solid Waste Dep.

The treatment of sections ..

(insert FA)

first applies to of the statutes
contracts entered into
on the effective date of
this subsection.

1. In the component bar:

For the action phrase, execute:

create → action: → *NS: → inappl

For the text, execute:

create → text: → *NS: → inapplA

2. Nonstatutory subunits are numbered automatically. Fill in the Section # or subsection # only if a "frozen" number is needed.

SECTION # _____

Initial applicability;

(#1) ()

This act first

applies to

Insert IA

1 895.58 (4) (b) The acts or omissions involving the special exempt solid wastes
2 were required or permitted in a contract for a transportation-related public works
3 project and the acts or omissions conformed to the provisions of the contract.

4 **SECTION 12.** 895.58 (4) (c) of the statutes is created to read:

5 895.58 (4) (c) The person complied with all of the applicable conditions of the
6 waiver or exemption under s. 289.43 (3), (4), (7), or (8).

7 **SECTION 13.** 895.58 (4) (d) of the statutes is created to read:

8 895.58 (4) (d) The exempt solid waste in on the list maintained under sub. (2m).

9 **SECTION 9409. Effective dates; circuit courts.**

10 (1) ~~IMMUNITY FOR SOLID WASTE USE.~~ The treatment of section 895.58 (title), (1)
11 (am), (cr), and (d), (2), (2m), (3), (3m), and (4) (intro.), (a), (b), (c), and (d) of the
12 statutes takes effect on the first day of the 4th month beginning after publication.
13

✓ *This is:*

*INS
IA*

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0363/3dn
RPN:kmg:pg

November 10, 2000

This draft adds an initial applicability SECTION.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us

Nelson, Robert P.

From: Wong, Manyee
Sent: Wednesday, December 27, 2000 9:32 AM
To: Nelson, Robert P.
Subject: FW: Sstatutory Amendmends for Special Waste

Hi,

Please make the department's requested changes to LRB 0363/3. Thanks!

-----Original Message-----

From: Koziar, Paul J
Sent: Friday, December 22, 2000 1:09 PM
To: 'pap@dewittross.com'; 'walker.t@midplains.net'; 'stevensp@chorus.net'
Cc: Meyer, George E; Hochmuth, Jay G; Polasok jr., Joseph P; Kluesner, Elizabeth M; Cutshall, Carol; Bangert, Suzanne A; Whited, Gary; Wong, Manyee; Leveque, Charles; Kessler, Kevin K; Huebner, Paul M; Potter, Lance
Subject: Sstatutory Amendmends for Special Waste

Attached is a memo from Suzanne Bangert regarding the agreements reached on statutory revisions on special waste that we have been discussing. An original copy of this memo has been signed and sent today. For those cc'd I will assume the electronic version is sufficient. If not please contact me.

Have a happy and safe holiday.



895.58memo1222.doc

CORRESPONDENCE/MEMORANDUM

State of Wisconsin

DATE: December 28, 2000
TO: Peter Peshek – DeWitt Ross and Stevens
Tom Walker & Pat Stevens – WTBA
FROM: Suzanne Bangert - DNR
SUBJECT: Statutory Amendments for Special Waste

LM 12/28 9:40 am
Kate Cooper
7-3133
Talked to
Kevin Kessler
Replace whole
draft with
these
changes.

6-0014

Thank you, Peter, for your December 20, 2000 correspondence and proposal on this subject. We have reached agreement on the statutory revisions that we've been discussing.

Although we may not share your concerns on regarding the breadth of s. 289.43(8), Stats., we have no objection to the addition of s. 289.43(8)(b)4. as you've proposed. Therefore, we'll ask the Department of Administration to include the requested statutory changes (below) in the biennial budget bill. Our understanding is that WTBA supports these changes.

We appreciate the cooperation of the WTBA on this matter. We look forward to continuing to work with the Association on ways to enable and encourage the safe use of special wastes in public works projects.

DNR / WTBA Proposed Statutory Changes Regarding Special Wastes Used in Public Works Projects

SECTION 1 S. 289.43(8)(b)4., Stats., is created to read:

289.43(8)(b)4. Authorize use of the solid waste in public works projects.

SECTION 2 S. 895.58(1)(d), Stats., is amended to read:

895.58(1)(d) "Special waste" means any type of solid waste, as defined under s. 289.01(33), for which the department has granted a waiver or an exemption under ss. 289.43(3), (4), (7) or (8) or which is exempt by rule promulgated under s. 289.05(4). ~~that is characterized for beneficial use in public works projects by the department of natural resources.~~

SECTION 3 S. 895.58(2), Stats., is amended to read:

895.58(2) The department may characterize a solid special waste as suitable for beneficial use in public works projects by rule, memorandum of understanding between itself and other state agencies or local governmental units, or on a case-by-case basis. The department shall compile and maintain a list of special wastes that are suitable for use in specified types of public works projects in a format readily available to the general public and only those special wastes may be required by contracting agencies to be used in a public works project. The list may include conditions under which the special waste may be

used in the public works project in order for the provisions of (3) and (4) to be applicable. The list under this subsection is not a rule under s.227.01(13).

SECTION 4

S. 895.58(3), Stats., is amended to read:

895.58(3) Special waste, when used in a public works project, is exempt from ~~not subject to~~ regulation as solid waste under ch. 289 if all applicable conditions included in the list compiled under sub. (2) are met.

cc: George Meyer – AD/5
Jay Hochmuth – AD/5
Joe Polasek – MB/5
Elizabeth Kluesner – AD/5
Carol Cutshall – WDOT
Gary Whited – WDOT
Manyee Wong – DOA
Chuck Leveque – LS/5
Kevin Kessler – WA/3
Paul Koziar – WA/3
Paul Huebner – WA/3
Lance Potter – MB/5

Soon (12/28)

Stays;

drafter

D-Note

can redraft makes then printed a copy.

DOA:.....Wong - Immunity regarding the use of solid waste for public projects

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

Under this bill, solid wastes that DNR has exempted from the treatment requirement are considered special wastes and may be characterized by DNR as suitable for beneficial use in public works projects.

DON'T GEN. CAT.

1

AN ACT relating to: the budget.

Analysis by the Legislative Reference Bureau

COURTS AND PROCEDURE

OTHER COURTS AND PROCEDURE

as a special waste available

Under current law, DNR may characterize a solid waste for beneficial use in a public works project and must maintain a list of those characterized solid wastes in a format that is available to the public. Currently, a contracting agency in a public works project may only require the use of those characterized solid wastes in a public works project. Current law grants immunity from liability to any person for his or her acts or omissions while using those characterized solid wastes in a public works project if those acts or omissions occurred while performing work under the contract for the public works project, the contract permitted or required the use of those characterized solid wastes, and the acts or omissions conformed to the contract provisions. Current law makes the immunity inapplicable to acts or omissions that involve reckless, wanton, or intentional misconduct or that result in the death or injury of an individual.

Under current law, as a way to encourage new ways to treat or recycle solid waste, DNR may grant a research waiver or an exemption from the requirements regarding the treatment of solid waste for certain types of solid waste, or for solid waste facilities. This bill requires DNR to maintain a list of solid wastes that have

those special

are suitable for use in specified types of public works projects. The list may be used in public works projects.

been granted a research waiver or exemption and that may be of beneficial use in a transportation-related public works project. The bill prohibits a contracting agency in a transportation-related public works project from requiring the use of a solid waste in the project unless the solid waste is on the DNR list of exempt solid wastes and all of the applicable waiver or exemption conditions are met. Under the bill, a person who uses a listed exempt solid waste in a transportation-related public works project is exempt from liability if the act or omission occurred while performing work under the contract for the project, the contract permitted or required the use of exempt solid wastes, the acts or omissions conformed to the contract provisions, and the person complied with the applicable waiver or exemption conditions. The current law provisions prohibiting immunity for acts of reckless, wanton, or intentional misconduct or that result in the death or injury of an individual apply.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

the current provisions granting immunity from liability apply to the use of those listed special wastes in public works projects if the conditions established by DNR for their use are met. In addition,

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 895.58 (title) of the statutes is amended to read:

895.58 (title) Liability exemption; use of special solid waste under public works contracts.

SECTION 2. 895.58 (1) (am) of the statutes is created to read:

895.58 (1) (am) "Exempt solid waste" means a type of solid waste for which the department has granted a research waiver or an exemption under s. 289.43 (3), (4), or (8) or the type of solid waste used in a facility for which the department has granted an exemption under s. 289.43 (7).

SECTION 3. 895.58 (1) (cr) of the statutes is created to read:

895.58 (1) (cr) "Solid waste" has the meaning given in s. 289.01 (33).

SECTION 4. 895.58 (1) (d) of the statutes is repealed.

SECTION 5. 895.58 (2) of the statutes is repealed.

SECTION 6. 895.58 (2m) of the statutes is created to read:

1 895.58 (2m) The department shall maintain a list of exempt solid wastes that
2 may be of beneficial use in a transportation-related public works project. Any
3 applicable conditions of the waiver or exemption granted under s. 289.43 (3), (4), (7),
4 or (8) shall apply and the list of exempt solid wastes shall reference the applicable
5 conditions of each waiver or exemption.

6 SECTION 7. 895.58 (3) of the statutes is repealed.

7 SECTION 8. 895.58 (3m) of the statutes is created to read:

8 895.58 (3m) A contracting agency may not require the beneficial use or reuse
9 of a solid waste in a transportation-related public works project unless the solid
10 waste is on the list maintained under sub. (2m) and for which all of the applicable
11 conditions of the waiver or exemption are met.

12 SECTION 9. 895.58 (4) (intro.) of the statutes is amended to read:

13 895.58 (4) (intro.) A person is immune from liability for the use or reuse of
14 ~~special~~ an exempt solid waste on a transportation-related public works project or for
15 damages resulting from the person's actions or omissions relating to the use or reuse
16 of the ~~special~~ exempt solid waste on a transportation-related public works project
17 if all of the following apply:

18 SECTION 10. 895.58 (4) (a) of the statutes is amended to read:

19 895.58 (4) (a) The acts or omissions by the person occurred while performing
20 work under a contract for a transportation-related public works project, including
21 acts or omissions by any person who has a direct contractual relationship with the
22 prime contractor, as defined in s. 779.01 (2) (d), under a contract for a
23 transportation-related public works project to perform labor or furnish materials.

24 SECTION 11. 895.58 (4) (b) of the statutes is amended to read:

1 895.58 (4) (b) The acts or omissions involving the special exempt solid wastes
2 were required or permitted in a contract for a transportation-related public works
3 project and the acts or omissions conformed to the provisions of the contract.

4 **SECTION 12.** 895.58 (4) (c) of the statutes is created to read:

5 895.58 (4) (c) The person complied with all of the applicable conditions of the
6 waiver or exemption under s. 289.43 (3), (4), (7), or (8).

7 **SECTION 13.** 895.58 (4) (d) of the statutes is created to read:

8 895.58 (4) (d) The exempt solid waste in on the list maintained under sub. (2m).

9 **SECTION 9309. Initial applicability; circuit courts.**

10 (1) IMMUNITY FOR SOLID WASTE USE. The treatment of section 895.58 (title), (1)
11 (am), (cr), and (d), (2), (2m), (3), (3m), and (4) (intro.), (a), (b), (c), and (d) of the
12 statutes first applies to contracts entered into on the effective date of this subsection.

13 **SECTION 9409. Effective dates; circuit courts.**

14 (1) IMMUNITY FOR SOLID WASTE USE. The treatment of section 895.58 (title), (1)
15 (am), (cr), and (d), (2), (2m), (3), (3m), and (4) (intro.), (a), (b), (c), and (d) of the
16 statutes and SECTION 9309 (1) of this act take effect on the first day of the 4th month
17 beginning after publication.

18 (END)

insert 4-17 ✓

CORRESPONDENCE/MEMORANDUM

State of Wisconsin

DATE: December 28, 2000

TO: Peter Peshek - DeWitt Ross and Stevens
Tom Walker & Pat Stevens - WTBA

FROM: Suzanne Bangert - DNR

SUBJECT: Statutory Amendments for Special Waste

Thank you, Peter, for your December 20, 2000 correspondence and proposal on this subject. We have reached agreement on the statutory revisions that we've been discussing.

Although we may not share your concerns on regarding the breadth of s. 289.43(8), Stats., we have no objection to the addition of s. 289.43(8)(b)4. as you've proposed. Therefore, we'll ask the Department of Administration to include the requested statutory changes (below) in the biennial budget bill. Our understanding is that WTBA supports these changes.

We appreciate the cooperation of the WTBA on this matter. We look forward to continuing to work with the Association on ways to enable and encourage the safe use of special wastes in public works projects.

DNR / WTBA Proposed Statutory Changes Regarding
Special Wastes Used in Public Works Projects

SECTION # ~~289.43(8)(b)4. Stats.~~ *of the statutes* is created to read:

289.43(8)(b)4. Authorize use of the solid waste in public works projects.

SECTION # ~~895.58(1)(d). Stats.~~ *of the statutes* is amended to read:

895.58(1)(d) "Special waste" means any type of solid waste ~~as defined under s. 289.01(22)~~ *plain period* for which the department has granted a waiver or an exemption under s. 289.43(3), (4), (7) or (8) or which is exempt by rule promulgated under s. 289.05(4) *of the statutes* that is characterized for beneficial use in public works projects by the department of natural resources. *MOVE*

SECTION # ~~895.58(2). Stats.~~ *of the statutes* is amended to read:

895.58(2) The department may characterize a solid special waste as suitable for beneficial use in public works projects by rule, memorandum of understanding between itself and other state agencies or local governmental units, or on a case-by-case basis. The department shall compile and maintain a list of special wastes that are suitable for use in specified types of public works projects in a format readily available to the general public and only those special wastes may be required by contracting agencies to be used in a public works project. The list may include conditions under which the special waste may be

P.W.F.
subs.
used in the public works project in order for ~~the provisions of~~ (3) and (4) to be applicable. The list under this subsection is not a rule under s.227.01(13).

of the statutes
SECTION ~~4~~ *#*. ~~s. 895.58(3) Stats.~~ is amended to read:

plain text
895.58(3) Special waste, when used in a public works project, is exempt from ~~not subject to~~ regulation as solid waste under ch. 289 if all applicable conditions included in the list compiled under sub. (2) are met. *7*

cc:
George Meyer - AD/5
Jay Hochmuth - AD/5
Joe Polasek - MB/5
Elizabeth Kluesner - AD/5
Carol Gutschall - WDOT
Gary Whited - WDOT
Manyee Wong - DOA
Chuck Leveque - LS/5
Kevin Kessler - WA/3
Paul Koziar - WA/3
Paul Huebner - WA/3
Lance Potter - MB/5

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0363/4dn
RPN:kmg:pg

This draft makes the changes requested by DNR in the Suzanne Bangert memo. The draft no longer has initial applicability or delayed effective date sections.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0363/4dn
RPN:kmg:rs

January 4, 2001

This draft makes the changes requested by DNR in the Suzanne Bangert memo. The draft no longer has initial applicability or delayed effective date sections.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us

Tradewell, Becky

From: Wong, Manyee
Sent: Tuesday, January 09, 2001 3:21 PM
To: Tradewell, Becky
Subject: FW: Statutory Language Updates

Hi Becky,

Please review DNR's comments on the following drafts. Please make any changes necessary.

Thanks.

-----Original Message-----

From: Potter, Lance
Sent: Tuesday, January 09, 2001 3:10 PM
To: Wong, Manyee
Cc: Felker-Donsing, Susan
Subject: Statutory Language Updates

Hello Manyee,

Here are the changes that I have today. I will hopefully have the rest to you by tomorrow (1/10) morning.

LRB - 0320/3 Dry Cleaning



Comments on Dry
Cleaning 1.08....

LRB Draft - 0357/1 Funds for specific sites



Comments on LRB -
0357 .1.08.d...

LRB Draft - 0365/1 Criminal penalties for false filings in environmental programs

DNR staff has approved this draft.

LRB Draft - 0363/4 Immunity regarding the use of solid waste for public projects

DNR staff has approved the language. If the LRB analysis is used, please include the following suggested changes:



Comments on LRB
0363.4.doc

Comments on LRB – 0363/4 Immunity regarding the use of solid waste for public projects

Kevin Kessler wrote:

I think that the "Analysis by the Legislative Reference Bureau" is very difficult to read and doesn't explain the differences from existing law clearly or explicitly enough. I also puzzled by the references to waste treatment. My attempt at a more explicit explanation is below.

Under current law ^{in s. 985.58, Stats.} ~~in s. 985.58, Stats.~~ DNR may characterize a solid waste as a special waste available for beneficial use in a public works project and must maintain a list of those characterized solid wastes in a format that is available to the public. Current law does not explicitly state that DNR may establish conditions associated with characterizing a solid waste as a "special waste." Currently, a contracting agency in a public works project may only require the use of those special wastes in a public works project. Current law grants immunity from liability to any person for his or her acts or omissions while using those special wastes in a public works project if those acts or omissions occurred while performing work under the contract for the public works project, the contract permitted or required the use of those special wastes, and the acts or omissions conformed to the contract provisions. Current law makes the immunity inapplicable to acts or omissions that involve reckless, wanton, or intentional misconduct or that result in the death or injury of an individual.

no - not what doesn't say

Also, under current law ^{in s. 289.43, Stats.} ~~in s. 289.43, Stats.~~ as a way to encourage new ways to treat or recycle solid waste, DNR may grant a research waiver or an exemption from the requirements regarding the treatment of solid waste for certain types of solid waste, or for solid waste facilities, disposal or recycling of high volume industrial wastes and certain other types of solid waste.

Under this bill, solid wastes that DNR has exempted under ~~s. 289.43, Stats.~~ s. 289.43, Stats., from the ~~treatment requirement~~ normal disposal requirements are considered "special wastes" under s. 985.58 and may be characterized by DNR as suitable for beneficial use in public works projects.

This bill requires DNR to maintain a list of those special wastes that are suitable for use in specified types of public works projects. The list may include conditions under which the wastes may be used in public works projects. Under the bill, the current provisions granting immunity from liability apply to the use of those listed special wastes in public works projects if the conditions established by DNR for their use are met. In addition, the current law provisions prohibiting immunity for acts of reckless, wanton, or intentional misconduct or that result in the death or injury of an individual apply. For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.



Note

DOA:.....Wong - Immunity regarding the use of solid waste for public projects

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ^{DON'T GEN. CAT.} relating to: the budget.

Analysis by the Legislative Reference Bureau

COURTS AND PROCEDURE

OTHER COURTS AND PROCEDURE

Under current law, DNR may characterize a solid waste as a special waste available for beneficial use in a public works project and must maintain a list of those characterized solid wastes in a format that is available to the public. Currently, a contracting agency in a public works project may only require the use of those special wastes in a public works project. Current law grants immunity from liability to any person for his or her acts or omissions while using those special wastes in a public works project if those acts or omissions occurred while performing work under the contract for the public works project, the contract permitted or required the use of those special wastes, and the acts or omissions conformed to the contract provisions. Current law makes the immunity inapplicable to acts or omissions that involve reckless, wanton, or intentional misconduct or that result in the death or injury of an individual.

Under current law, as a way to encourage new ways to ~~treat or~~ recycle solid waste, DNR may grant a research waiver or an exemption from the requirements regarding the ~~treatment of solid waste for certain types of solid waste, or for solid waste facilities.~~ Under this bill, solid wastes that DNR has exempted from the

disposal or recycling of high-volume industrial wastes and certain other solid wastes

normal disposal

~~treatment~~ requirement are considered special wastes and may be characterized by DNR as suitable for beneficial use in public works projects. This bill requires DNR to maintain a list of those special wastes that are suitable for use in specified types of public works projects. The list may include conditions under which the wastes may be used in public works projects. Under the bill, the current provisions granting immunity from liability apply to the use of those listed special wastes in public works projects if the conditions established by DNR for their use are met. In addition, the current law provisions prohibiting immunity for acts of reckless, wanton, or intentional misconduct or that result in the death or injury of an individual apply.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 289.43 (8) (b) 4. of the statutes is created to read:

2 289.43 (8) (b) 4. Authorize use of the solid waste in public works projects.

3 **SECTION 2.** 895.58 (1) (cr) of the statutes is created to read:

4 895.58 (1) (cr) "Solid waste" has the meaning given in s. 289.01 (33).

5 **SECTION 3.** 895.58 (1) (d) of the statutes is amended to read:

6 895.58 (1) (d) "Special waste" means any type of solid waste that is
7 ~~characterized for beneficial use in public works projects by the department of natural~~
8 ~~resources for which the department has granted a waiver or an exemption under s.~~
9 ~~289.43 (3), (4), (7), or (8) or which is exempt by rule promulgated under s. 289.05 (4).~~

10 **SECTION 4.** 895.58 (2) of the statutes is amended to read:

11 895.58 (2) The department may characterize a solid special waste as suitable
12 ~~for beneficial use in public works projects by rule, memorandum of understanding~~
13 ~~between itself and other state agencies or local governmental units, or on a~~
14 ~~case-by-case basis.~~ The department shall compile and maintain a list of special
15 wastes that are suitable for use in specified types of public works projects in a format
16 readily available to the general public and only those special wastes may be required

1 by contracting agencies to be used in a public works project. The list may include
2 conditions under which the special waste may be used in the public works project in
3 order for subs. (3) and (4) to be applicable. The list under this subsection is not a rule
4 under s. 227.01 (13).

5 **SECTION 5.** 895.58 (3) of the statutes is amended to read:

6 895.58 (3) Special waste, when used in a public works project, is not subject to
7 exempt from regulation as solid waste under ch. 289 if all applicable conditions
8 included in the list complied under sub. (2) are met.

9 (END)

D-Note

This draft makes changes in the analysis based on the DNR request for changes. However, the analysis does not reference statutory sections and does not say what current law does not discuss or consider.

RPN

~~~~~

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0363/5dn
RPN:kmg:ijs

January 9, 2001

This draft makes changes in the analysis based on the DNR request for changes. However, the analysis does not reference statutory sections and does not say what current law does not discuss or consider.

Robert P. Nelson
Senior Legislative Attorney
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State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-0363/5
RPN:kmg:ijs

DOA:.....Wong – Immunity regarding the use of solid waste for public projects

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

COURTS AND PROCEDURE

OTHER COURTS AND PROCEDURE

Under current law, DNR may characterize a solid waste as a special waste available for beneficial use in a public works project and must maintain a list of those characterized solid wastes in a format that is available to the public. Currently, a contracting agency in a public works project may only require the use of those special wastes in a public works project. Current law grants immunity from liability to any person for his or her acts or omissions while using those special wastes in a public works project if those acts or omissions occurred while performing work under the contract for the public works project, the contract permitted or required the use of those special wastes, and the acts or omissions conformed to the contract provisions. Current law makes the immunity inapplicable to acts or omissions that involve reckless, wanton, or intentional misconduct or that result in the death or injury of an individual.

Under current law, as a way to encourage new ways to recycle solid waste, DNR may grant a research waiver or an exemption from the requirements regarding the disposal or recycling of high-volume industrial wastes and certain other solid wastes. Under this bill, solid wastes that DNR has exempted from the normal

disposal requirement are considered special wastes and may be characterized by DNR as suitable for beneficial use in public works projects. This bill requires DNR to maintain a list of those special wastes that are suitable for use in specified types of public works projects. The list may include conditions under which the wastes may be used in public works projects. Under the bill, the current provisions granting immunity from liability apply to the use of those listed special wastes in public works projects if the conditions established by DNR for their use are met. In addition, the current law provisions prohibiting immunity for acts of reckless, wanton, or intentional misconduct or that result in the death or injury of an individual apply.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 289.43 (8) (b) 4. of the statutes is created to read:

2 289.43 (8) (b) 4. Authorize use of the solid waste in public works projects.

3 **SECTION 2.** 895.58 (1) (cr) of the statutes is created to read:

4 895.58 (1) (cr) "Solid waste" has the meaning given in s. 289.01 (33).

5 **SECTION 3.** 895.58 (1) (d) of the statutes is amended to read:

6 895.58 (1) (d) "Special waste" means any type of solid waste ~~that is~~
7 ~~characterized for beneficial use in public works projects by the department of natural~~
8 ~~resources~~ for which the department has granted a waiver or an exemption under s.
9 289.43 (3), (4), (7), or (8) or which is exempt by rule promulgated under s. 289.05 (4).

10 **SECTION 4.** 895.58 (2) of the statutes is amended to read:

11 895.58 (2) The department may characterize a ~~solid~~ special waste as suitable
12 ~~for beneficial use in public works projects by rule, memorandum of understanding~~
13 ~~between itself and other state agencies or local governmental units, or on a~~
14 ~~case-by-case basis.~~ The department shall compile and maintain a list of special
15 wastes that are suitable for use in specified types of public works projects in a format
16 readily available to the general public and only those special wastes may be required

1 by contracting agencies to be used in a public works project. The list may include
2 conditions under which the special waste may be used in the public works project in
3 order for subs. (3) and (4) to be applicable. The list under this subsection is not a rule
4 under s. 227.01 (13).

5 SECTION 5. 895.58 (3) of the statutes is amended to read:

6 895.58 (3) Special waste, when used in a public works project, is not subject to
7 exempt from regulation as solid waste under ch. 289 if all applicable conditions
8 included in the list complied under sub. (2) are met.

9 (END)